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March 7, 2001

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

In Re: *Petition for Interconnection Arbitration by DIECA Communications, Inc. d/b/a
Covad Communications Company, Inc. Against BellSouth Telecommunications,
Inc.*
Docket No. 00-01130

Dear David:

Please find enclosed the original and thirteen copies of Covad Communications Company's Response to BellSouth Telecommunications Motion to Limit Issues. A copy has been provided to counsel for BellSouth.

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:


Henry Walker

HW/nl
Attachment

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In re:)	
Petition for Interconnection Arbitration)	
By DIECA Communications, Inc., d/b/a)	Docket No. 00-01130
Covad Communications Company, Inc.)	
Against BellSouth Telecommunications, Inc.)	

**COVAD COMMUNICATIONS COMPANY'S RESPONSE TO BELL SOUTH
TELECOMMUNICATIONS, INC.'S MOTION TO LIMIT ISSUES**

COMES NOW DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad"), and responds to BellSouth Telecommunications, Inc.'s ("BellSouth") Motion to Limit Issues in the Arbitration for Interconnection Agreement between the two companies. In essence, BellSouth argues that any docket other than Covad's Arbitration is the appropriate place to set terms and conditions for BellSouth's performance for and contract with Covad. Section 252(b)(1) of the 1996 Telecommunications Act (the "Act") entitles Covad to petition a state commission to arbitrate any open issues remaining between BellSouth and Covad with respect to their Interconnection Agreement. Likewise, the Act specifically requires the state commission to resolve each issue set forth in the petition by imposing the appropriate conditions as required upon the parties to the Agreement. Id. at § 252(b)(4)(C). Moreover, pursuant to § 252(b)(4)(C), Covad is entitled to have these open issues resolved within nine (9) months from the time which negotiations began with BellSouth. The Authority is certainly cognizant of this rule and has set an appropriate schedule to address these open issues in a timely manner. By suggesting that the vast majority of Covad's issues should be pushed into other dockets, BellSouth is attempting to deprive Covad of a prompt resolution of the issues pending before the Authority.

Moreover, as explained below, Covad's Arbitration docket (No. 00-01130) remains the best, if not the only, appropriate docket for resolution of the issues raised in Covad's Petition.

A. ISSUES THAT MUST REMAIN IN THE ARBITRATION DOCKET

Issues 5(a), 5(b), 5(c), and 18

As a DSL provider in Tennessee, Covad purchases from BellSouth a variety of loops to provide DSL service: ADSL, HDSL, UCL, UDC/IDSL, and Line Shared loops. The timely provisioning of these loops is a critical component of Covad's interconnection with BellSouth. Nonetheless, BellSouth suggests that loop delivery intervals are better established in a generic performance measures docket, which impose penalties for poor performance on the literally thousands of UNEs which BellSouth provides. While certainly penalties and performance measures are important, and those should be based on firm loop delivery intervals, Covad needs a contract provision that specifies the intervals in which BellSouth must deliver elements to Covad. Covad has proposed that BellSouth be allowed three (3) business days to deliver loops and five (5) business days when those loops require conditioning. This is a reasonable period of time. In contrast, BellSouth refuses to commit to anything other than "target" delivery intervals and using its "best efforts" to achieve them. Obviously, BellSouth's proposal gives Covad no enforceable contractual rights.

Interestingly, BellSouth suggests that loop delivery intervals are best set in a performance measures docket. In a similar docket in Georgia, BellSouth took the position that no firm loop delivery interval for xDSL loops was appropriate. Rather, BellSouth argued that xDSL loops should be delivered in the same timeframe as "DS1" loops. Covad needs a set loop delivery interval contract provision so that both Covad and BellSouth will know what is expected of

BellSouth. BellSouth consistently refuses to provide any service that is not specifically set forth in Covad's contract. To avoid this problem in the future, Covad asked for a firm loop delivery interval in its contract. Issues 5(a), 5(b), 5(c), and 18 should not be deferred to some future generic docket. It is imperative that this issue be resolved promptly so that Covad can grow its business in Tennessee. Covad is prepared to present evidence that establishes a reasonable loop delivery interval for xDSL loops in Tennessee. Under the Act, Covad is entitled to have that issue adjudicated in its Arbitration and incorporated into its contract with BellSouth.

Issue 7

This issue addresses the proper definition of loops in the contract between Covad and BellSouth. BellSouth has repeatedly testified, most recently in Georgia, that all xDSL loops are provisioned through a "designed loop process" because CLECs have requested such a designed loop and have, in fact, incorporated the designed loop requirement in their Interconnection Agreements with BellSouth. Since the beginning of its negotiations with BellSouth, Covad has insisted that it did not need and did not want "designed" xDSL loops. Covad has argued that BellSouth should not force it and other CLECs to endorse the "designed loop" process by defining all its xDSL offerings as "designed" loops.

As the largest DSL provider in the country, Covad understands what type of loop it needs to deliver DSL. DSL was created to function on voice grade copper loops. Thus, Covad does not need, and should not be required, to incorporate BellSouth's "designed loop" process into simple loop definitions. As a result, Covad has rejected BellSouth's proposed definition of the UCL, ADSL, HDSL, or UDC/IDSL loops in which BellSouth defines them as "designed" loops. BellSouth should not be able to force CLECs to pay for the designed loop process because BellSouth has defined that its xDSL loops require that process. Covad does not wish such a

definition to be imposed upon it and this issue is properly before the Authority in the Arbitration between Covad and BellSouth. Moreover, Covad has also raised in its Petition definitional issues such as a requirement that BellSouth not alter its loop definitions after it executes its Agreement with Covad. Neither of these issues have been or could be addressed in a cost proceeding. Thus, they are properly before the Authority in Covad's Arbitration.

Issues 9 and 15

Issue 9 addresses the delivery intervals for dark fiber and Issue 15 addresses installation times for splitters used to provide line sharing loops for Covad. BellSouth suggests, again, that these issues are better determined in a generic performance measures docket. This is incorrect for two reasons. First, BellSouth's proposed Interconnection Agreement to Covad included delivery intervals for both splitters used for line sharing and for provisioning of dark fiber. Therefore, BellSouth has already waived its right to adjudicate this in another docket. Second, delivery intervals for line shared splitters are critical to Covad's service offering using line sharing. Dark fiber is a UNE to which Covad is entitled. Intervals for delivering these elements should be included in the Agreement. Since Covad and BellSouth could not reach agreement on those intervals during negotiations, these issues must be adjudicated in the Arbitration between Covad and BellSouth.

Issues 11 and 19

Issues 11 and 19 address whether BellSouth should be permitted to charge a manual local service request charge when it does not make an electronic means of submitting an LSR for xDSL loops and line sharing available. Issue 11 addresses this issue for stand alone xDSL loops and Issue 19 addresses this issue for line shared loops. BellSouth suggests that these should be addressed in a cost proceeding. On the contrary, they are properly terms and conditions of a

contract between BellSouth and Covad and should be litigated in Covad's Arbitration. Covad does not ask the Authority to determine what the manual or electronic charge should be, but rather, when these should be imposed. Since BellSouth has failed to meet its legal obligations to provide electronic ordering, it should not benefit by imposing excessive manual service order rates on Covad. Thus, this issue must be addressed in the context of Covad's Arbitration.

Issue 12

This issue addresses whether BellSouth should be able to unilaterally impose a charge for a submitted local service request ("LSR"), which is later modified or cancelled by Covad. This issue arises from BellSouth's attempt to impose these charges, despite the fact that many times Covad's modification or alteration of its order is a result of BellSouth failing to provision that order in a timely manner. As a result, BellSouth and Covad should be entitled to offer evidence to establish whether BellSouth's attempt to impose such charges in these conditions is reasonable. BellSouth contends that this issue should be addressed in the performance measures docket because it is a "proposed enforcement mechanism." Actually, this issue results from BellSouth's unwarranted attempt to impose charges on Covad as a result of BellSouth's own failed performance. If BellSouth is willing to withdraw its proposed charge for any modified or cancelled LSR, Covad would be willing to address this issue in the performance measures docket. Otherwise, it is rightfully part of the Arbitration between Covad and BellSouth.

Issue 14

This issue addresses a specific restriction BellSouth has placed on Covad's ability to qualify and reserve a plain voice grade SL1 loop for its DSL service. Although Covad discussed this issue briefly in the xDSL docket (Docket No. 00-00544), it is not clear this issue will ultimately be resolved by the Authority. Thus, it is appropriate that Covad include it on its list of

unresolved, open issues. By refusing to allow Covad to qualify, reserve, and order a voice grade loop for DSL service, BellSouth is essentially depriving Covad of its right to utilize loop makeup information to the fullest extent to qualify and order whichever loop it chooses. Covad is entitled to contract terms and conditions that govern its right to select, reserve, and order any loop it chooses. Thus, this issue should not be removed from the Arbitration.

Issues 16 and 17

Issues 16 and 17 relate to terms and conditions of line sharing. Covad agrees that these issues were raised in the xDSL docket, but it is not clear whether a definitive ruling will be issued as to each of these issues. Thus, out of an abundance of caution, Covad has included these on the open issue list. They are critical to Covad's ability to compete using line shared loops in Tennessee. Thus, these issues should remain in the Arbitration between Covad and BellSouth.

Issue 31

Issue 31 involves Covad's proposal that BellSouth resolve all facility issues related to xDSL loops within thirty (30) days. Service continues to be delayed by the number and duration of Covad orders that are "held" pending facilities issues. BellSouth refuses to commit to any interval for resolving these issues. Covad has been able to obtain no relief from BellSouth with respect to increasing efficiency and resolving these facility issues in a timely manner. This remains an open issue relating to the Interconnection Agreement between Covad and BellSouth and Covad is entitled to have it resolved in its Arbitration with BellSouth.


B. ISSUES THAT MAY BE REFERRED TO OTHER DOCKETS

Issues 10(a), 10(b), 13, 24, and 30

Covad agrees that these pricing issues have been raised either in the xDSL docket or in the ongoing generic cost docket. Nonetheless, since neither of those dockets has come to resolution, these are open issues between Covad and BellSouth. Pursuant to § 252 of the Act, Covad is entitled to arbitrate these issues as a part of its Interconnection Agreement arbitration.

CONCLUSION

As addressed above, issues 5(a), 5(b), 5(c), 7, 9, 11, 12, 14, 15, 18, 19, and 31 must remain in the Arbitration between Covad and BellSouth. Provided that issues 16 and 17 are addressed and resolved in the xDSL docket, Covad is willing to remove those from this Arbitration. Because prompt resolution of these issues is so critical, Covad included all of them in its Petition for Arbitration with BellSouth, as it is entitled to do under the Act. Issues 10(a), 10(b), 13, 24 and 30 are cost issues which Covad agrees will be addressed in the xDSL docket or in the generic costing docket.


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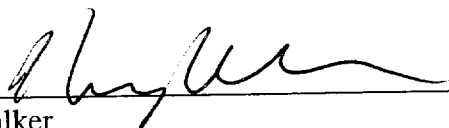
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Attorney for DIECA Communications, d/b/a
Covad Communications Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 7th day of March, 2001.

Guy Hicks, Esq.
BellSouth Telecommunications, Inc.
333 Commerce St., Suite 2101
Nashville, TN 37201-3300



Henry Walker